Supreme Court, U.S.
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No. 95-1297

In The

Supreme Court of the United States

October Term, 1995

DAVID PIERCE, ET AL.,

Petitioners,

v.

IOWA-MISSOURI CONFERENCE
OF SEVENTH-DAY ADVENTISTS,

Respondent.

**On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Iowa**

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Supreme Court of Iowa correctly determined that the free exercise clause of the First Amendment precluded it from reviewing any issues related to the Seventh-day Adventist Church's policies, procedures or actions in terminating the employment of one of its ministers, David Pierce?

PARTIES

Plaintiffs:	David Pierce; Mary Pierce, his wife; and Melanie Pierce, Jason Pierce and Nathaniel Pierce, their children.
Defendant:	Iowa-Missouri Conference of Seventh-day Adventists.

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STATEMENT OF THE CASE

On February 26, 1985, the Executive Committee of the Iowa-Missouri Conference of the Seventh-day Adventist Church (the Church) voted to hire David Pierce as a ministerial intern. App. p. 20.

During his employment as a ministerial intern with the Church, David Pierce was assigned as a pastor, and as an assistant pastor, to various Seventh-day Adventist Churches in the State of Missouri. App. p. 20.

On February 21, 1990, the Executive Committee voted not to continue the employment of David Pierce as a ministerial intern beyond March 31, 1990, because the Executive Committee felt that Pierce had failed to prove himself to be called to the ministry. In the opinion of the Executive Committee, Pierce had failed to show satisfactory and effective leadership progress and professional development in his work as an intern minister sufficient for him to continue to serve as a minister of the gospel. App. p. 20. The Executive Committee also perceived that Pierce's ministry was failing, and that was one of the primary reasons for his termination from employment. App. pp. 20-21, 23.

David Pierce did not appeal the matter of his termination to any level of the Church hierarchy beyond the Executive Committee of the Iowa-Missouri Conference. The Executive Committee was the highest level of the Church hierarchy to which the matter of his termination was carried. App. p. 21.

On March 31, 1992, Pierce, his wife and children brought this action against the Church. In their First

Amended and Substituted Petition, the Pierce's challenged David Pierce's termination upon the following theories: (1) breach of a unilateral contract of employment; (2) negligence/breach of assumed duty; (3) defamation as a result of Pierce's termination; (4) intentional infliction of emotional distress; (5) equitable fraud/constructive fraud; and (6) economic duress.

The Church filed a motion for summary judgment. It argued that the free exercise clause of the First Amendment precluded the Iowa district court from exercising authority over this dispute. The Iowa district court agreed, and granted the motion, after determining that review of Pierce's termination would involve an inappropriate interpretation of the Church's policies and procedures. On appeal, the Iowa Supreme Court affirmed in a published opinion.

REASONS FOR DENYING THE WRIT

I.

REVIEW IS UNWARRANTED BECAUSE THE DECISION OF THE IOWA SUPREME COURT WAS CORRECT. IT DOES NOT CONFLICT WITH A DECISION OF THIS COURT OR ANY COURT OF APPEALS.

A. This Court's Decision in Milivojevich Has Been Consistently Followed By the Circuit Courts and By the State Courts

The First Amendment to the United States Constitution provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof[.]" The First Amendment is applicable to the courts of Iowa by the Fourteenth Amendment to the U.S. Constitution.

This Court has long held that on matters of church discipline, faith, practice, and religious law, the Free Exercise Clause requires all civil courts to refrain from interfering with the determination of the "highest of these church judicatories to which the matter has been carried." *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727, 20 L. Ed. 666 (1871).

This Court most recently affirmed this doctrine in *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976), in which the Court stated as follows:

> [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

Id. at 714-15. Civil courts are bound to accept the decisions of the judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. *Id.* at 713.

In the instant case, the undisputed summary judgment evidence established that: (1) the Church's Executive Committee had the authority to employ ministers; (2)

the Executive Committee exercised that authority by voting not to continue David Pierce's employment as a minister of the gospel, in part because the Executive Committee perceived that Pierce's ministry was failing; and (3) the Executive Committee was the highest level of the Church hierarchy to which the matter of Pierce's termination was carried. In the final analysis, therefore, under *Milivojevich*, the Iowa civil courts could not substitute their judgment for the judgment of the Church's Executive Committee which had the ultimate authority to employ ministers generally, and Pierce specifically.

Milivojevich has been consistently followed by the circuit courts, which have declined to exercise jurisdiction in employment disputes between churches and their clergy. In *Lewis v. Seventh-day Adventists Lake Region Conference*, 978 F.2d 940, at 942-43 (6th Cir. 1992), for example, the Sixth Circuit Court of Appeals held as follows:

> We conclude that the First Amendment bars civil courts from reviewing decisions of religious judicatory bodies relating to the employment of clergy. *Even when, as here, the plaintiff alleges that the religious tribunal's decision was based on a misapplication of its own procedures and laws, the civil courts may not intervene.*

(emphasis added). *See also Natal v. Christian & Missionary Alliance*, 878 F.2d 1575 (1st Cir. 1989); *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S. Ct. 3333, 92 L. Ed. 2d 739 (1986); *Kaufmann v. Sheehan*, 707 F.2d 355 (8th Cir. 1983).

Milivojevich has also been followed by the state courts, which have similarly held that state trial courts

have no jurisdiction over the types of employment claims asserted by the Petitioners in this case. *See, e.g., Patterson v. Southwestern Baptist Theological Seminary*, 858 S.W.2d 602 (Tex. App. – Fort Worth 1993, n.w.h.) (affirming a Texas state trial court's grant of summary judgment for the defendant, because, under *Milivojevich*, the trial court could not delve into issues concerning whether the plaintiff's employment was terminated *in accordance with the defendant's policies and procedures*) (emphasis added); *McDonnell v. Episcopal Diocese of Ga.*, 381 S.E.2d 126, 128 (Ga. Ct. App. 1989) (affirming a Georgia state trial court's grant of summary judgment in favor of the defendant on a minister's breach of contract action, because, under *Milivojevich*, it would be unconstitutional for a court to decide whether a binding civil contract was intended by the defendant's policy manual), *cert. denied*, 493 U.S. 935 (1989); *Green v. United Pentecostal Church Int'l*, 899 S.W.2d 28 (Tex. App. – Austin 1995, n.w.h.).

In Count I of their First Amended and Substituted Petition, the Pierces alleged that the Church "breached its unilateral employment contract with David Pierce, *by terminating him in violation of Defendant's . . . own published and communicated working policies, guidelines and procedures.*" (emphasis added). App. p. 4. However, as the federal and state court authorities cited above have expressly held, the Iowa civil courts are prohibited by the First Amendment from interpreting the Church's policies and procedures in order to determine whether or not the Executive Committee followed them in its actions toward Pierce. Such an inquiry is directly contrary to the mandates of the Supreme Court in *Milivojevich*, which specifically rejected the proposition that a church's alleged

failure to follow its own procedures created jurisdiction for civil court review.

The gravamen of the Pierces' claims under Counts II through VI of their First Amended and Substituted Petition was also that the Church did not follow its policies, guidelines and procedures in terminating Pierce's employment as an intern minister. These additional claims are subsidiary to and dependent on the Pierces' principal claim under Count I for breach of contract, and all arise directly from the Church's conduct in terminating Pierce's employment as an intern minister.

In Count II, the Pierces alleged that the Church failed to exercise reasonable care in the application of its "own working policies, guidelines, and procedures *in the process of making its decision on whether to continue or terminate the employment of Plaintiff, David Pierce.*" (emphasis added). App. p. 5. In Count III, the Pierces alleged that the Church defamed David Pierce by "falsely accusing him of incompetence in the performance of his ministerial duties and *inability to function effectively as a minister.*" (emphasis added). App. p. 8. In Count IV, the Pierces alleged that the Church "intended to cause, or recklessly disregarded the probability of causing emotional distress to Plaintiffs *by terminating the employment of Plaintiff, David Pierce.*" (emphasis added). App. p. 10. In Count V, the Pierces alleged that the Church's failure to disclose to David Pierce material facts *"about the operation of its working policies"* and Pierce's *"rights under those policies,"* "amounted to *false representations of the employment and termination status of Plaintiff, David Pierce.*" (emphasis added). App. p. 12. Finally, in Count VI, the Pierces alleged that the Church wrongfully induced Pierce, to

"sign a release purporting to exonerate Defendant from liability for its wrongdoing *in the termination of David Pierce.*" (emphasis added). App. p. 13.

In *Lewis v. Seventh-day Adventists Lake Region Conference, supra,* the plaintiff's complaint contained claims for breach of contract, as well as derivative claims for promissory estoppel, intentional infliction of emotional distress, and loss of consortium. The Sixth Circuit treated each of these derivative claims as subsidiary and dependent upon the plaintiff's principal claim for breach of contract. Thus, the Sixth Circuit held that the trial court properly declined to exercise jurisdiction over the plaintiff's *entire* complaint.

Similarly, in *Hutchison v. Thomas,* 789 F.2d 392, 395-96 (6th Cir.), *cert. denied,* 479 U.S. 885, 107 S. Ct. 277, 93 L. Ed. 2d 253 (1986), the Sixth Circuit dismissed various claims, including a defamation claim, against a church, holding that the resolution of the disputes would require inquiry into ecclesiastical decisions in violation of the Free Exercise Clause of the First Amendment.

A number of other courts have also considered the constitutional propriety of resolving the same types of derivative claims against religious organizations which have been asserted by the Plaintiffs in this case. These courts have consistently determined that they lack jurisdiction to resolve those disputes and derivative claims. *See, e.g., Natal v. Christian & Missionary Alliance,* 1988 WL 159169 at 4, 8 (D.P.R. Dec. 15, 1988) (court dismissed a wrongful termination claim because termination decisions are exclusively within purview of the church and would have dismissed a libel and slander claim had such

a claim been properly asserted because *"[a]ny such claim* would arise and would be inextricably intertwined with the . . . [plaintiff's] alleged dissatisfaction with defendant's interpretation and application of the manual of the church" (emphasis added)), *aff'd*, 878 F.2d 1575, 1577-78 (1st Cir. 1989); *Higgins v. Maher*, 258 Cal. Rptr. 757, 759-60 (Cal. Ct. App. 1989) (affirming a California state trial court's dismissal for want of subject matter jurisdiction of a priest's claims for defamation, invasion of privacy, breach of the covenant of good faith and fair dealing, intentional infliction of emotional distress, and wrongful termination, because the state court was precluded "from meddling in the ecclesiastical authority of the church"), *cert. denied*, 493 U.S. 1080 (1990).

In *Farley v. Wisconsin Evangelical Lutheran Synod*, 821 F. Supp. 1286 (D. Minn. 1993), a federal district court granted summary judgment for a church on the plaintiff's defamation claim. The plaintiff claimed that the church made defamatory statements about him during its attempts to remove him from his position as a pastor. As the court reasoned:

> Resolution of Farley's defamation claim would require the court *to review [the church's] bases for terminating him, an ecclesiastical concern, and the veracity of [the church's] statements*. The court determines that such an inquiry would implicate the concerns expressed in the First Amendment. Based on that determination, the court concludes that it has no jurisdiction in this matter.

(emphasis added). *Id.* at 1290.

In the instant case, each of the Pierces' claims under Counts II through VI are, like their claims under Count I, inextricably intertwined in David Pierce's dissatisfaction with the Church's interpretation and application of the procedures used in his termination. Accordingly, they all reside in the forbidden territory which the First Amendment prohibits civil courts from entering.

B. The Iowa Supreme Court Correctly Affirmed Summary Judgment for the Church Under the Law, Facts, and Circumstances of this Case.

In the Iowa district court's ruling granting summary judgment for the Church, and in the Iowa Supreme Court's decision affirming summary judgment for the Church, both courts carefully considered, and rejected, the Pierces' contention that this is not a case about wrongful termination, but only about an alleged breach of a secular unilateral employment contract.

In their instant petition for writ of certiorari, the Pierces continue to attempt to characterize this lawsuit as nothing more than a simple secular claim that the Church breached its alleged promise to periodically evaluate David Pierce's performance. The Pierces argue essentially that this lawsuit could therefore have been resolved merely by establishing that David Pierce's personnel file did not contain any documentation of the Church's perceived deficiencies in Pierce's performance.

This is not what the Pierces alleged in their First Amended and Substituted Petition, however. App. pp. 1-17. There they specifically alleged, in Count II, for example, that the Church did not exercise reasonable care

"in the process of making its decision whether to continue or terminate the employment of Plaintiff, David Pierce." (emphasis added). App. p. 5. In Count III, the Pierces further alleged that the Church defamed Pierce by *"falsely accusing him of incompetence in the performance of his ministerial duties and inability to function effectively as a minister."* App. p. 8.

As a result of the Pierces' own pleadings, the issue of David Pierce's fitness and qualifications as a minister of the gospel are inextricably intertwined with the resolution of all of the Pierces' claims, including their claims for breach of an alleged unilateral employment contract. Even with regard to those claims, the Pierces alleged in their Brief to the Iowa Supreme Court that among the policies which they claimed the Church violated by failing to place "documentation" in Pierce's personnel file was the policy that "effectiveness of all employees is to be reviewed periodically," and the policy which specifies that a "licensed minister's leadership progress, professional development and *spiritual growth* will be reviewed annually by the Conference." (emphasis added). App. p. 22. *Any* inquiry into a minister's *"spiritual growth,"* including the means or method adopted by the Church to evaluate that "growth," however, is obviously and necessarily an inherently ecclesiastical concern.

The Church never offered any summary judgment evidence disputing the fact that Plaintiff David Pierce's personnel file did not contain documentation regarding evaluations.

As the trial court correctly observed, the term "wrongfully terminated" appears twice in Plaintiffs' Petition; the allegation that Plaintiff David Pierce "has been deprived of gainful employment" appears three times in Plaintiffs' Petition; and the phrase "wrongdoing in connection with his termination" appears four times in Plaintiffs' Petition. App. pp. 1-17. A careful examination of Plaintiffs' First Amended and Substituted Petition ("Plaintiffs' Petition"), reveals, in fact, that each and every one of the Pierces' six causes of action all arise directly from, and are inextricably intertwined with David Pierce's termination from his employment as a minister with the Seventh-day Adventist Church.

Because it is undisputed that the gist of this lawsuit involved a complaint over the termination of the employment relationship between a church and its minister, ecclesiastical concerns are *necessarily* implicated. As the Sixth Circuit Court of Appeals has held:

> We look to the substance and effect of plaintiffs' complaint, not its emblemata. Howsoever a suit may be labelled, once a court is called upon to probe into a religious body's selection and retention of clergymen, the First Amendment is implicated. We agree entirely with the Fifth Circuit that:
>
> The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship *must necessarily be recognized as of prime ecclesiastical concern.* (emphasis added).

> *McClure v. Salvation Army*, 460 F.2d 553, 558-59 (5th Cir.), *cert. denied*, 409 U.S. 896, 93 S. Ct. 132, 34 L. Ed. 2d 153 (1972).

Natal v. Christian & Missionary Alliance, 878 F.2d 1575 at 1577 (1st Cir. 1989).

As noted by the Eighth Circuit, the minister plays a particularly sensitive role in any church organization. *Kaufmann v. Sheehan*, 707 F.2d 355 at 359 (8th Cir. 1983). Through the minister the church is able to accomplish its purpose of conveying its religious message to its members. Because of the significant role of ministers and priests, the relationship between the church and its clergy "*must necessarily be recognized as applying ecclesiastical concern.*" (emphasis added). *Hafner v. Lutheran Church-Missouri Synod*, 616 F. Supp. 735 at 739 (D. Ind. 1985). The freedom to select clergy is constitutionally protected against state interference as being part of the free exercise of religion. *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, 73 S. Ct. 143, 154, 97 L. Ed. 120 (1952). A church's existence may well depend upon who it selects to preach its doctrine. *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164, 1168 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S. Ct. 3333, 92 L. Ed. 2d 739.

The Church never contended, as the Pierces claim, that simply because it is a church, it is above the law. Indeed, the Church readily concedes that if this lawsuit had been brought by a former employee of the Church who had not been employed as a minister and whose duties had not been primarily of an ecclesiastical and religious nature, this suit would not be barred by the First Amendment. *See Geary v. Visitation of the Blessed Virgin Mary Parish Sch.*, 1993 WL 390433 (3d Cir. 1993) (Age

Discrimination in Employment Act held applicable to religious school's lay faculty); *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir.), *cert. denied*, ___U.S.___, 111 S. Ct. 131, 112 L. Ed. 2d 99 (1990); *E.E.O.C. v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986); *Volunteers of Am.-Minn.-Bar None Boys Ranch v. N.L.R.B.*, 752 F.2d 345 (8th Cir.), *cert. denied*, 472 U.S. 1028, 105 S. Ct. 3502, 87 L. Ed. 2d 633 (1985); *E.E.O.C. v. Pacific Press Publishing Ass'n*, 676 F.2d 1272 (9th Cir. 1982) (editorial secretary at church-affiliated publishing house); *E.E.O.C. v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981), *cert. denied*, 456 U.S. 905, 102 S. Ct. 1749, 72 L. Ed. 2d 161 (1982) (Title VII of the Civil Rights Act of 1964 held applicable to administrative and support staff at a seminary); *E.E.O.C. v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980), *cert. denied*, 453 U.S. 912, 101 S. Ct. 3143, 69 L. Ed. 2d 994 (1981) (Title VII could be applied to promotion of a secular teacher in religious educational institution).

The central and undisputed fact in this case, however, which distinguishes this case from those cited above, is that David Pierce was employed as a minister of the Seventh-day Adventist Church, and that this lawsuit is directly challenging Pierce's termination from his employment in that position. Accordingly, the Iowa Supreme Court correctly determined that the Pierces' claims are all barred by the First Amendment as a matter of law. *Rayburn v. General Conference of Seventh-day Adventists*, 772 F.2d 1164 (4th Cir. 1985), *cert. denied*, 478 U.S. 1020, 106 S. Ct. 3333, 92 L. Ed. 2d 739 (1986).

C. The *Drevlow* and *Minker* Decisions Are Readily Distinguishable, Do Not Constitute a Conflict Among the Circuit Courts, and Do Not Preclude This Court From Denying the Writ.

In *Drevlow v. Lutheran Church, Missouri Synod*, 991 F.2d 468 (8th Cir. 1993), a minister and his wife alleged that a church violated its own bylaws by removing the minister's name from a list of eligible ministers. In a second portion of their complaint, the plaintiffs alleged that the church had circulated a personal information file which had contained the false statement that a prior marriage of the minister's spouse had ended in divorce. The Eighth Circuit held that the First Amendment barred that portion of the plaintiffs' complaint pertaining to the minister's suspension. However, the Eighth Circuit concluded that the district court did have jurisdiction to hear the second portion of the complaint because it did not involve an inquiry into the church's "bylaws or religious beliefs," and because the plaintiff "Drevlow's *fitness as a minister*" was "not in dispute." (emphasis added). *Drevlow*, 991 F.2d at 471-472.

In *Minker v. Baltimore Annual Conference of United Methodist Church*, 894 F.2d 1354 (D.C. Cir. 1990), a minister brought suit against his church alleging age discrimination and breach of contract. The D.C. Circuit held that the minister's age discrimination claims were barred by the First Amendment, as well as his breach of contract claims which alleged that the church's Book of Discipline had been violated. The court reasoned that the "interpretation of the . . . provisions of the Book of Discipline is *inherently an ecclesiastical matter*." (emphasis added). The court held, however, that the minister's cause of action

for breach of an oral employment contract was not barred by the First Amendment because this narrow claim involved an allegation of a simple oral promise made to the plaintiff that he would be provided with a congregation more suited to his training and skills in exchange for his continued work at the church.

The Church respectfully submits that Petitioners' claims in the instant case are most similar to the claims in *Minker* and *Drevlow* which were held to be barred by the First Amendment. Although Petitioners appear to argue that they are merely asserting a simple secular claim that the Church breached its alleged promise to periodically evaluate David Pierce's performance, as argued above, this is not what the Pierces alleged in their First Amended and Substituted Petition. There, the Pierces, rather, made numerous and repeated sweeping allegations that the Church violated its "working policies, guidelines and procedures" by terminating Plaintiff David Pierce. In order to determine whether or not those guidelines, policies and procedures have been violated, the Iowa civil court would necessarily have had to interpret the Church's policies and procedures governing the criteria for the employment of its ministers, which is an inherently ecclesiastical matter.

D. The Banfield Article Does Not Preclude this Court From Denying the Writ.

In their Petition, Petitioners continue to rely heavily on an article from the *Adventist Review* which includes a discussion by a Warren Banfield of the church's apparent employment policies. Petitioners essentially contend that

as a result of this article, the Church has waived its right to argue that this case is barred by the First Amendment.

As the Church argued to the Iowa Supreme Court, the Banfield article did not constitute competent summary judgment evidence because it was not properly authenticated as a business record, and was merely attached as an exhibit to Plaintiffs' Resistance to Defendant's Motion for Summary Judgment with no foundation whatsoever.[1] Moreover, the Pierces provided no proof that the Banfield article actually reflected the official position of the Church in this case, nor was there any indication that the comments by Banfield were intended to apply to *ministerial* employees, or to other employees of the Church.

Even if the Banfield article *did* constitute competent summary judgment evidence of the Church's policies applicable to its ministerial employees, it would still not constitute a waiver of the Church's contention that this lawsuit is barred by the First Amendment. As the Georgia Court of Appeals observed in *McDonnell v. Episcopal*

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[1] The Banfield article would also have been inadmissible under Rule 56(e) of the Federal Rules of Civil Procedure, which, according to Petitioners in their Brief to the Iowa Supreme Court, the Iowa courts look to in interpreting Iowa R. Civ. P. 237. Fed. R. Civ. P. 56(e) permits a summary judgment motion to be opposed by any of the kinds of evidentiary materials listed in Fed. R. Civ. P. 56(c). Fed. R. Civ. P. 56(c), in turn, lists *only* affidavits, pleadings, depositions, answers to interrogatories and admissions on file, as proper summary judgment evidence. Because the Banfield article was not offered through Affidavit testimony, or by any of the other means allowed by Fed. R. Civ. P. 56, it constitutes inadmissible summary judgment evidence under the Federal Rules and must be disregarded.

Diocese of Georgia, 381 S.E.2d 126 at 127 (Ga. App. 1989), "[t]he civil court cannot take jurisdiction of an ecclesiastical issue *even if the parties present it for resolution*, because the First Amendment prohibits such action by the civil judicial system." (emphasis added).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DAVID PIERCE, Individually, and as Next Friend of MELANIE PIERCE, JASON PIERCE, and NATHANIEL PIERCE, and MARY PIERCE, Individually, Plaintiffs, vs. IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS, Defendant,	LAW NO. CL 095-56065 FIRST AMENDED AND SUBSTITUTED PETITION (Filed May 4, 1993)

COME NOW the Plaintiffs, and for their cause of action against the Defendant, state to the Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs are residents of Lincoln, Lancaster County, Nebraska.

2. Defendant is a corporate religious entity, having its principal place of business in West Des Moines, Polk County, Iowa.

3. Defendant is a subdivision of the Mid-America Union Conference and the North American Division of the Seventh-day Adventist Church, which organizations

formulate policies, guidelines and procedures to be followed in employment practices of the Defendant.

4. Plaintiffs, David Pierce and Mary Pierce, at all times material, have been husband and wife.

5. Plaintiffs, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, at all times material, have been the children of Plaintiffs David Pierce and Mary Pierce.

6. This Court has jurisdiction of this case in that the Defendant is a resident of Iowa, and the acts and omissions complained of herein, and the resulting damages, took place in West Des Moines, Iowa.

7. Venue is properly laid in this judicial district pursuant to Iowa Code § 616.18 (1991).

8. The amount in controversy in this action exceeds the maximum jurisdictional amount of Small Claims Court.

OPERATIVE FACTS

9. Plaintiff, David Pierce, was employed by Defendant, Iowa-Missouri Conference of Seventh-day Adventists, from June, 1985 through March 31, 1990, as an intern minister, serving congregations in the State of Missouri.

10. On March 31, 1990, the Defendant terminated Plaintiff, David Pierce, from his employment with Defendant.

11. Defendant has, and operates on the basis of, certain written working policies which govern the bases

for which employees may be terminated, and the procedures to be followed in terminating employees, including policies, guidelines and procedures formulated by the Mid-America Union Conference and the North American Division of Seventh-day Adventists.

COUNT I

BREACH OF UNILATERAL CONTRACT OF EMPLOYMENT

12. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

13. Defendant and its parent organizations published and made known to Plaintiff, David Pierce, the content of certain working policies, guidelines, and procedures governing the termination of employees.

14. Defendant's working policies, guidelines, and procedures constituted an employment contract giving rise to an offer of continued employment and promised that employment would not be terminated by any other procedure than that outlined in the working policies, guidelines, and procedures.

15. During and after the times when Defendant communicated its working policies, guidelines, and procedures to Plaintiff, David Pierce, Plaintiff forsook other employment alternatives and remained in the Defendant's employ, so as to constitute an acceptance of the provisions found in Defendant's working policies, guidelines, and procedures.

16. Plaintiff, David Pierce, gave consideration for defendant's offer of continued employment by giving service to Defendant, and by obeying, to the best of his knowledge and ability, the rules of employment, and foregoing other employment opportunities, all in reasonable reliance on Defendant's offer.

17. Defendant breached its unilateral employment contract with Plaintiff, David Pierce, by terminating him in violation of Defendant's and Defendant's parent organizations' own published and communicated working policies, guidelines, and procedures.

18. Having wrongfully terminated David Pierce in violation of its own working policies, guidelines, and procedures, Defendant sought to escape the consequences of its wrongdoing by withholding from David Pierce a termination settlement due him under church policy unless and until he agreed to sign a release exonerating Defendant from all liability for its wrongdoing in connection with his termination.

19. As a result of Defendant's breach of its unilateral contract of employment, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has, therefore, been damaged in his ability to obtain comparable work for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional

expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of the Defendant.

20. Plaintiffs, Mary Pierce, Melanie Piece, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory and consequential damages in fair and reasonable monetary amounts to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT II

NEGLIGENCE/BREACH OF ASSUMED DUTY

21. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

22. Defendant undertook to apply its own working policies, guidelines, and procedures in the process of making its decision whether to continue or terminate the employment of Plaintiff, David Pierce.

23. Defendant knew, or should have recognized that such an investigation and application of appropriate policies was necessary for the protection of Plaintiff in terms of retaining his position with Defendant.

24. In applying appropriate policy guidelines, Defendant failed to exercise reasonable care in the application of those guidelines.

25. The failure of Defendant to exercise reasonable care increased the risk of harm to Plaintiffs of the loss of Plaintiff, David Pierce's, job.

26. Plaintiffs were injured because of the reliance of Plaintiff, David Pierce, on the undertaking of Defendant, and because of Defendant's reliance upon the undertaking of its agents in applying the appropriate [sic]

27. The negligent performance of the undertakings of Defendant was a proximate cause of damage to Plaintiffs, and Plaintiffs intend to rely, in this Count, upon the doctrine of assumed duty, as outlined in the Restatement (Second) of Torts, §§ 323 and 324A.

28. Having wrongfully terminated David Pierce in violation of its own working policies, guidelines, and procedures, Defendant sought to escape the consequences of its wrongdoing by withholding from David Pierce a termination settlement due him under church policy unless and until he agreed to sign a release exonerating Defendant from all liability for its wrongdoing in connection with his termination.

29. As a result of Defendant's negligent breach of its assumed duties, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has, therefore, been damaged in his ability to obtain comparable work

for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of Defendant.

30. Plaintiffs, Mary Pierce, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT III

DEFAMATION

31. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

32. Defendant, by means of notes, memoranda, reports to governing bodies of the Seventh-day Adventist

Church and its subdivisions, oral and/or written recommendations to potential employers, and other oral and written communications, has defamed Plaintiff, David Pierce, falsely accusing him of incompetence in the performance of his ministerial duties and inability to function effectively as a minister.

33. The words of Defendant's communications are libelous per se in that, on their face, they degrade Plaintiff, render him odious, subject him to public hatred, contempt, and ridicule, have tended to and indeed have injured him in his business or trade, have exposed him to contempt and the deprivation of the benefits of public confidence.

34. Defendant has caused these false and defamatory statements to be published to a variety of third parties.

35. The false and defamatory communications of Defendant were not privileged, or in the alternative, if they were subject to a privilege, the privilege was exceeded or abused in that the actions of Defendant went beyond the duty, if any, it had to report on the employment of Plaintiff, was done in a manner not justified by the occasion, and was continued after Defendant had full opportunity, information, and documentation, and knew, or should have known, that its defamatory statements were false and unjustified.

36. Damage to the Plaintiff's reputation may be implied by law from the per se nature of the defamatory statements made by Defendant regarding Plaintiff.

37. The false and defamatory communications of Defendant regarding Plaintiff were a proximate cause of damages to Plaintiff.

38. As a result of the defamatory communications of Defendant, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has, therefore, been damaged in his ability to obtain comparable work for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of Defendant.

39. Plaintiffs, Mary Pierce, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT IV

INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS

40. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

41. The conduct of Defendant, as outlined above, and as to be revealed in further discovery in this case, was outrageous, and beyond what can be tolerated by society.

42. Defendant intended to cause, or recklessly disregarded the probability of causing emotional distress to Plaintiffs by terminating the employment of Plaintiff, David Pierce.

43. Plaintiffs have suffered extreme or severe emotional distress as a result of the termination of Plaintiff, David Pierce.

44. The termination of the employment of Plaintiff, David Pierce, by Defendant is the actual and proximate cause of emotional distress suffered by Plaintiffs.

45. The intentional infliction of severe emotional distress by Defendant was a proximate causae [sic] of damage to Plaintiffs.

46. As a result of the intentional infliction of severe emotional distress by Defendant, Plaintiff, David Pierce, has been deprived of gainful employment for which he was qualified, and which he was capably performing. He has lost wages and will continue to lose wages. He has been stigmatized as an ineffective minister and has,

therefore, been damaged in his ability to obtain comparable work for which he is qualified, and fully capable of performing. In addition, Plaintiff, David Pierce, has suffered severe mental and emotional distress and anguish, embarrassment and humiliation, has suffered economic loss, difficulty in meeting financial obligations, additional expenses related to job seeking, and has incurred additional expenses required as a result of physical and emotional stress reactions proximately caused by the conduct of Defendant.

47. Plaintiffs, Mary Pierce, Melanie Pierce, Jason Pierce, and Nathaniel Pierce, have suffered the loss of Plaintiff, David Pierce's, consortium, support, services, love, companionship, comfort, and affection, and have incurred expenses related thereto, all proximately caused by the conduct of Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action.

COUNT V

EQUITABLE FRAUD/CONSTRUCTIVE FRAUD

48. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

49. Defendant had superior knowledge of its own working policies and of their operation, as well as of the

rights of employees pursuant to those policies, and Plaintiff was only able to obtain such information by and through the assistance of Defendant.

50. Defendant established a confidential relationship with Plaintiff, David Pierce, by gaining Plaintiff's confidence in purporting to act and advise in Plaintiff's interest.

51. Defendant, therefore, had a duty to fully and accurately disclose all information regarding its employment policies and Plaintiff's rights under those policies.

52. Defendant represented to Plaintiff that the signing of a release exonerating Defendant from all liability for its wrongdoing was a necessary prerequisite to receiving a termination settlement due Plaintiff under Defendant's working policies.

53. Defendant failed to disclose to Plaintiff, David Pierce, certain material facts about the operation of its working policies, including, but not limited to, his right to receive a termination settlement based upon his number of years of service to Defendant and that Defendant had no right to demand from Plaintiff a release from liability for its wrongdoing in order to receive said termination settlement.

54. Defendant's representations, and its failure to disclose material facts, amounted to false representations of the employment and termination status of Plaintiff, David Pierce.

55. Plaintiff, David Pierce, relied on the representations of Defendant in signing the release presented to him.

56. The false representations of the Defendant were a proximate cause of David Pierce's signing the release presented to him, purporting to waive all of his legal rights to due process of law, access to the Courts, and redress for tortious and other unlawful activity by the Defendant against him.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action, and Plaintiffs request an order from this Court declaring the release signed by David Pierce to be void and unenforceable because induced by the fraud of the Defendant.

COUNT VI

ECONOMIC DURESS

57. Plaintiffs hereby incorporate by this reference paragraphs 1 through 11 of this Petition as if fully set forth herein.

58. In an attempt to obtain a release from liability for its wrongdoing, Defendant used threats, intimidation, and economic coercion beyond the legal bounds of its rights in inducing Plaintiff, David Pierce, to sign a release purporting to exonerate Defendant from liability for its wrongdoing in the termination of David Pierce.

59. The threats, intimidation, and economic coercion of Defendant destroyed the free agency of Plaintiff,

David Pierce, and caused him to do what he would not otherwise do, or was not legally bound to do.

60. Because of the superior position and strength of Defendant, Plaintiff had no means of protection against the economic coercion, threats, and intimidation of Defendant.

61. Defendant at all times had the power to injure the Plaintiff by making good on its threats to withhold from Plaintiff a termination settlement which was his right and due under Defendant's own working policies.

62. The cooperation of Plaintiff with Defendant's action was done because of fear of injury to his economic welfare and his family.

63. Defendant, therefore, has no right to benefit from its threats, intimidation, and economic coercion by forcing Plaintiff to waive his legal rights of redress against Defendant for Defendant's wrongdoing.

64. The actions of Defendant were a proximate cause of David Pierce's signing the release presented to him, purporting to waive all of his legal rights to due process of law, access to the Courts, and redress for tortious and other unlawful activity by the Defendant against him.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for compensatory damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action, and Plaintiffs request an order from this Court declaring the release signed by David Pierce to be

void and unenforceable because induced by the fraud of the Defendant.

COUNT VII
PUNITIVE DAMAGES

65. Plaintiffs hereby incorporate by this reference paragraphs 1 through 64 of this Petition as if fully set forth herein.

66. Defendant's actions in breaching its unilateral contract of employment, as described above, were taken in bad faith, and constituted, individually and in the aggregate, a breach by Defendant of both its own published working policies, guidelines, and procedures, and of the implied covenant of good faith and fair dealing recognized by law within the employment arrangement between Plaintiff and Defendant.

67. The breach of Defendant's unilateral contract of employment was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

68. The conduct of Defendant in breaching its unilateral contract of employment constituted a separate unlawful or tortious act, apart from the breach of the contract, entitling Plaintiffs to exemplary or punitive damages.

69. The negligent breach of Defendant's assumed duties was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

70. The defamatory communications of Defendant were willful and wanton, and made in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

71. The intentional infliction of severe emotional distress by Defendant was willful and wanton, and made in malice, or in reckless disregard of the rights of Plaintiffs, entitling Plaintiffs to exemplary or punitive damages.

72. The conduct of the Defendant in making false representations to David Pierce to induce him to sign a release from liability was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, and was done to fraudulently cover up and to escape the consequences of Defendant's wrongful conduct in terminating Plaintiff, David Pierce, entitling Plaintiffs to exemplary or punitive damages.

73. The conduct of the Defendant in using economic duress against David Pierce to induce him to sign a release from liability was willful and wanton, and done in malice, or in reckless disregard of the rights of Plaintiffs, and was done to fraudulently cover up and to escape the consequences of Defendant's wrongful conduct in terminating Plaintiff, David Pierce, entitling Plaintiffs to exemplary or punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendant, Iowa-Missouri Conference of Seventh-day Adventists, for punitive damages in a fair and reasonable monetary amount to be determined by the trier of fact, along with interest as provided by law, and the costs of this action, and Plaintiffs request an order from this Court

declaring the release signed by David Pierce to be void and unenforceable because induced by the fraud of the Defendant.

LaMARCA & LANDRY, P.C.

By /s/ Robert K. DuPuy
Robert K. DuPuy PK0008928

1300 50th Street
West Des Moines, Iowa 50266
(515) 225-2600

ATTORNEYS FOR PLAINTIFFS

APPENDIX B

AFFIDAVIT OF W.D. WAMPLER IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, William D. Wampler, after having been duly sworn, do state the following:

1. My name is William D. Wampler and I am employed as President of the Iowa-Missouri Conference of Seventh-day Adventists (hereinafter "Iowa-Missouri Conference"), 1005 Grand Avenue, West Des Moines, Iowa 50265. I have been employed as President of the Iowa-Missouri Conference since 1981. On the basis of my position as President of the Iowa-Missouri Conference, I have personal knowledge of the following facts:

2. The Seventh-day Adventist Church is a worldwide ecclesiastical corporation which has a representative form of church government organized on four constituent levels. The first level is the local church. The second level is the local conference which is a united organized body of local churches in a given geographic territory. The third level is the union conference, which is a united body of local conferences within a larger territory. The fourth level is the General Conference, which is the largest unit of the Church organization, and which embraces unions in all parts of the world. Divisions are sections of the General Conference, with administrative responsibility assigned to them in designated geographic areas. The North American Division includes all of the United States and Canada. The Iowa-Missouri Conference is the local conference which covers the States of Iowa and Missouri.

3. The policies and guidelines for the North American Division of the Seventh-day Adventist Church are set forth in the *Working Policy of the North American Division of the General Conference* (hereinafter "*Working Policy*"). (True and correct copies of various sections of the *Working Policy* which was in effect in 1989-1990 are attached as Exhibit "A.").

4. The Introduction to the 1989-1990 *Working Policy* provides that the *Working Policy* "is the authoritative voice of the Church in all matters pertaining to the work of the Seventh-day Adventist denomination in the North American Division."

5. Section B 05 10 of the 1989-1990 *Working Policy* provides that each Conference session is responsible for electing an Executive Committee of the Conference, which is vested with the delegated authority of all the churches within the Conference.

6. The Bylaws of the Iowa-Missouri Conference, which were in effect in 1989 and 1990, empower the Executive Committee to employ ministers. (A true and copy of those Bylaws are attached as Exhibit "B").

7. The Executive Committee of the Iowa-Missouri Conference ("Executive Committee") is made up of church lay members, as well as pastors. The Executive Committee also includes the Iowa-Missouri Conference Officers, which, in 1989 and 1990, consisted of myself as President, Walter Brown, as Secretary, and Tom Evans, as Treasurer.

8. On February 26, 1985, the Executive Committee voted to hire David Pierce as a ministerial intern upon his graduation from Union College in May 1985.

9. During his employment as a ministerial intern with the Iowa-Missouri Conference, David Pierce was assigned as a pastor, and as an assistant pastor, to various Seventh-day Adventist Churches in the State of Missouri.

10. The last churches to which David Pierce was assigned as a ministerial intern were the Oak Grove Seventh-day Adventist Church in Kansas City, Missouri, where he was pastor, and the Kansas City Central Seventh-day Adventist Church, where he was an assistant pastor.

11. On February 21, 1990, the Executive Committee voted not to continue the employment of David Pierce as a ministerial intern beyond March 31, 1990, because the Executive Committee felt that Pierce had failed to prove himself to be called to the ministry. In the opinion of the Executive Committee, Pierce had failed to show satisfactory and effective leadership progress and professional development in his work as an intern minister sufficient for him to continue to serve as a minister of the gospel.

12. On or about July 29, 1991, Walter Brown and I received a letter from Pierce dated July 25, 1991, in which he stated that he believed that his termination as an intern minister was due to the Executive Committee's perception that his ministry was failing. The Executive Committee did perceive that Pierce's ministry was failing, and that was, in fact, one of the primary reasons for his termination from employment. (A true and correct

copy of the letter I received from Pierce is attached as Exhibit "C").

13. Following his termination, David Pierce did not appeal the matter of his termination to any level of the Seventh-day Adventist Church hierarchy beyond the Executive Committee of the Iowa-Missouri Conference. The Executive Committee was the highest level of the church hierarchy to which the matter of his termination was carried.

14. I have read this Affidavit consisting of four (4) pages, including this page, and swear that I have personal knowledge of the statements made therein and that those statements are true and correct.

(Signature Affixed)
WILLIAM D. WAMPLER

Exhibit "A"

WORKING POLICY

North American Division

of the General Conference of

Seventh-day Adventists

1989-1990 Edition

Printed in U.S.A.

REVIEW AND HERALD PUBLISHING
ASSOCIATION
Washington, DC 20039-0555
Hagerstown, MD 21740

* * *

L 20 15 Annual Review – A licensed minister's leadership progress, professional development and spiritual growth will be reviewed annually by the conference.

* * *

Exhibit "B"

CONSTITUTION
OF THE
IOWA-MISSOURI CONFERENCE
OF SEVENTH-DAY ADVENTISTS

* * *

ARTICLE VII – EXECUTIVE COMMITTEE AND DUTIES

* * *

Section 2 – . . . . The executive committee shall. . . . employ . . . ministers, secretaries, treasurers, and other persons. . . .

* * *

Exhibit "C"

Pastor David L. Pierce
5318 Bancroft Avenue
Lincoln, NE 68506
402-486-3631

July 25, 1991

Dear Elder Wampler and Elder Brown:

When I joined your conference I joined it with deep determination to serve my God and church through ministry. I have for some time felt the calling of the Lord to serve Him as a pastor. . . .

* * *

Because of the depth of my desire to serve the church, as you love the church, you can imagine my pain at being terminated. . . .

* * *

I believe the following:

1. That my termination was due to your perception of a failing ministry. . . .

* * *

Sincerely,

(Signature Affixed)
Pastor David L. Pierce